IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH: JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 17/2000

SANJAY KUMAR BHASKAR
Vs.
MALVIYA NATIONAL INSTITUTE OF TECHNOLOGY, JAIPUR & ANR.

Date: 13.10.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. R.D. Rastogi for the petitioner.
Mrs. Naina Saraf for the respondents.

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By way of this writ petition, the petitioner has claimed the following reliefs:_

> (a) The respondents may be directed not to discontinue the services of the petitioner till the availability of regularly selected candidates.
>
> (b) The respondents may be directed to accelerate the process of regular selections in accordance with the prescribed provisions of Law and appoint the petitioner on the post of Senior Technician, if found suitable and eligible for the post.
>
> (c) In case any adverse order is passed to the prejudice of the petitioner, the same may be declared illegal, ultra vires and unconstitutional and may be quashed and set aside.
>
> (d) Any other appropriate writ order or direction which may be considered just and proper in the facts and circumstances

of the case may kindly also be issued in favour of the petitioner.

It is not disputed that the petitioner was appointed on a consolidated salary of Rs. 3,600/- per month for fixed term and knowing the fact that the term is going to expire on 31.12.99, the petitioner preferred this writ petition before this Court on 23.12.99, seven days earlier prior to term expired.

At the time of issuance of notices, this Court vide order dated 23.12.99 ordered to maintain status quo. Pursuant to the said status quo order, the petitioner continued till 24.02.2004. On 24.02.2004, this Court having considered the submissions made on behalf of the parties and considering the judgment rendered by the Division Bench of this Court in the case of ***Mritunjaya Mishara Vs. M.R.E.C. Society (D.B. Civil Special Appeal (Writ) No. 358/2001), decided on 29.05.2002,*** vacated the interim order passed by this Court on 23.12.99. Immediately thereafter the petitioner was not allowed to continue and his services were not extended.

The petitioner by way of this writ petition has claimed that he may be allowed to continue in the

service till the availability of the regularly selected candidates. The petitioner also claimed to hold the process of regular selections.

The Division Bench of this Court in the case of ***Mritunjaya Mishara Vs. M.R.E.C. Society (supra),*** was heavily relied by the petitioner and has given direction to hold the regular recruitment. Therefore, the same directions are need not be given as the Division Bench of this Court has already issued directions. However, as per clause (c) of prayer clause of the writ petition, it is additionally prayed that in case any adverse order is passed to the prejudice of the petitioner, the same may be declared illegal, ultra vires and unconstitutional and may be quashed and set aside.

Since adverse order subsequently is passed and without amending the writ petition and challenging that order, the petitioner emphasize that as per clause (c) of the prayer clause, this order be quashed and set-aside.

I am not satisfied with the submissions made on behalf of the petitioner. As per the considered view of this Court and of the Hon'ble Supreme Court, the

petitioner ought to have challenge the termination order as fresh cause of action was made available to the petitioner.

Further, with regard to allow the petitioner on the post, admittedly the petitioner was allowed to continue on account of the status quo order passed by this Court on 23.12.99 up to 24.02.2004 but the said interim order dated 23.12.99 has been vacated by this Court on 24.02.2004 and since then the petitioner is not continuing in service.

As per the ratio decided by the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka & others Vs. Uma Devi (3) & others, decided on 10.04.2006 and reported in (2006)4 SCC 1,*** as the petitioner was not regularly appointed, regular appointment cannot be claimed to continue on the post. As is evident from the appointment order that his appointment was made for fixed term on a consolidated salary and the term has not been extended.

Learned counsel for the petitioner submits that pursuant to the judgment of the Division Bench of this Court in the case of ***Mritunjaya Mishara Vs.***

M.R.E.C. Society (supra), as the other similarly situated persons are allowed to continue in service, the petitioner may also be allowed to continue. Much water has been flown after the judgment of the Division Bench of this Court in the aforementioned case.

As per the ratio decided by the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka & others Vs. Uma Devi (3) & others (supra),*** the judgment passed by the Division Bench of this Court in the case ***Mritunjaya Mishara Vs. M.R.E.C. Society (supra),*** is not applicable in the facts and circumstances of the present case. Therefore, the petitioner is not legally entitled to continue till the regularly selected candidates are made available through regular selection process as the petitioner is already discontinued in service since February, 2004.

In view of the aforesaid observations, I find no merit in the writ petition.

Consequently, the writ petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

/KKC/